



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

December 7, 1990

Honorable Luis V. Saenz  
Cameron County District Attorney  
Cameron County Courthouse  
974 E. Harrison Street  
Brownsville, Texas 78520

OR90-573

Dear Mr. Saenz:

We received your letter of December 5, 1990, in which you referred to us a request made under the Texas Open Records Act, V.T.C.S. art. 6252-17a, for documents in an investigative and prosecutorial case file. Your request was assigned ID# 11227. You have asked for an expeditious review of this matter, since the requested information relates to a conviction of an individual who is under a death sentence, which is scheduled to be carried out on December 17, 1990.

You state that the individual was tried on two counts of capital murder, for two murders that arose out of a continuing occurrence and that occurred about ten minutes apart. In one case he was tried and convicted by a jury and sentenced to death for the murder of a city police officer. In the other case, he pled guilty and was sentenced to life imprisonment for the murder of a Texas Department of Public Safety Trooper. You have received a request from the Texas Resource Center for information related to the case in which he was sentenced to life imprisonment, including all files and documents pertaining to the investigation of the criminal incident and to the individual's arrest and detention.

You claim that the information requested is excepted from disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act. We will address section 3(a)(3) first.

Section 3(a)(3) provides the following exception:

Information relating to litigation of a criminal or civil nature . . . to which the state or political subdivision is, or may be, a party . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, § 3(a)(3).

Section 3(e) provides as follows:

For purposes of Subsection (a)(3) of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

V.T.C.S. art. 6252-17a, § 3(e).

According to your letter, the Texas Resource Center contends that there is no post-conviction remedy available in the case in which the life sentence was given, so that this particular litigation is no longer pending pursuant to section 3(e). Your office contends that the evidence in the two cases was substantially the same and that the documents requested by the Texas Resource Center are substantially the same as the documents in the death penalty case. Since post-conviction remedies are still available in the death penalty case, under section 3(e) the state is still a party to that litigation.

Prior decisions of this office on the question of whether it is reasonable to anticipate litigation indicate that the same information may be relevant to more than one lawsuit. See, e.g., Open Records Decision Nos. 416 (1984); 395 (1983); 323 (1982). In your capacity as prosecutor, you have concluded that the information in the life sentence case file is "information relating" to the death penalty case. See Open Records Decision No. 121 (1976). Since the two criminal cases arose out of two closely related crimes, we believe your conclusion is reasonable. See Open Records Decision No. 551 (1990). Accordingly, section 3(a)(3) permits you to withhold the requested information. We need not address the other exceptions you raise.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-573.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/le

Ref.: ID# 11227

Enclosure: ORD Nos. 551, 416, 395, 323, 121

cc: Phyliss L. Crocker  
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